

Montana Water Court
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MONTANA WATER COURT, UPPER MISSOURI DIVISION
MISSOURI RIVER FROM SUN RIVER TO MARIAS RIVER - BASIN 41Q

* * * * *

CLAIMANTS: Dale E. Barta; Gary P. Barta; Susan D.
Barta; Dean F. Barta; Brian S. Barta

CASE 41Q-0122-I-2023
41Q 30134351

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusion of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

FINDINGS OF FACT

1. Dale E. Barta, Gary P. Barta, Susan D. Barta, Dean F. Barta, and Brian S. Barta (Claimants) are the record owners of claim 41Q 30134351.

2. Claim 41Q 30134351 was decreed with DNRC issue remarks:

THIS CLAIM DOES NOT APPEAR TO MEET THE DEFINITION OF AN EXEMPT RIGHT UNDER SECTION 85-2-222 (1), MCA.

THIS CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 41Q DECREE ISSUED 05/27/2010.

3. The Claimants were ordered to meet with the DNRC to address the issue remark indicating claim 41Q 30134351 may not be an exempt claim. (Doc.¹1.00).

4. On June 20, 2023 DNRC Water Resource Specialist Aamna K. Flemmer filed a Memorandum. Flemmer stated she discussed the issue remarks with Claimants Dale E. Barta and Gary P. Barta and she reviewed the claim abstract, the scanned claim file, and the DNRC Claim Examination Manual. (Doc. 2.00). According to Flemmer:

This water right was claimed by Dale E. Barta, Gary P. Barta, Susan D. Barta, Dean F. Barta, Brian S. Barta with a priority date of July 13th, 1962, with the point of diversion at NWNESW SEC 15, 19N 9E. Dale E. Barta and Gary P. Barta met with DNRC personnel in Lewistown Water Regional Office on May 6th and confirmed that there was a developed spring. The claimants filed on a developed spring with a flow rate of 5 GPM, which is a manmade development for groundwater source. Means of diversion would be a spring box as originally claimed. The claimant's application, as filed, does meet the definition of an exempt right under Section 85-2-222 (1) MCA.

After initial examination, someone changed the means of diversion from a spring box to a dam, changed the source type from ground water to surface water and removed the "Spring" from the source name. At that point it appears that they also changed the P355 issue remark to a P554 issue remark. There is no record of why these changes were made, but they appear to have been made in error.

Based on the information provided by Flemmer, the following modifications to claim 41Q 30134351 are appropriate to reflect the historical use of the claim and resolve the issue remark:

¹ "Doc." numerical references correlate to case file docket numbers in the Water Court's Full Court case management system.

Flow Rate: **5.00 GPM** ~~A SPECIFIC FLOW RATE HAS NOT BEEN DECREED FOR THIS USE FROM THIS ONSTREAM RESERVOIR.~~

Source Name: **SPRING** ~~UNNAMED TRIBUTARY OF HIGHWOOD CREEK~~

Source Type: ~~SURFACE WATER~~ **GROUND WATER**

Point of Diversion and Means of Diversion:

ID	Govt Lot	Qtr Sec	Sec	Twp	Rge	County
1		NWNESW	15	19N	9E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: **DAM DEVELOPED SPRING**

Reservoir: ~~ONSTREAM~~

Govt Lot	Qtr Sec	Sec	Twp	Rge	County
	NWNESW	15	19N	9E	JUDITH BASIN

~~Diversion to Reservoir: DIVERSION # 1~~

5. An Order was issued setting a deadline to determine if the Claimants agreed or disagreed with Ms. Flemmer's recommendations. The Order indicated that if nothing were filed by the July 20, 2023 deadline, this Water Master would conclude the Claimants agree with the recommended changes and a Master's Report would be issued.

6. Nothing was filed by the deadline.

CONCLUSIONS OF LAW

1. The Water Court must address all issue remarks that appear on a claim as well as any objections the claim receives. Sections 85-2-247, and 85-2-248, MCA.

2. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA. This prima facie validity may be overcome by evidence showing that one or more elements of the claim are incorrect. This standard of proof applies to objectors or claimants objecting to their own claims. Rule 19, W.R.Adj.R., *Nelson v. Brooks*, 2014 MT 120; 375 Mont.86, 95; 329 P.3d 558, 564.

3. Pursuant to Rule 22, W.R.Adj.R., if a claimant, objector, or intervenor fails to appear at a scheduled conference or hearing or fails to comply with an order issued by the Water Court, the Water Court may issue such orders of sanction with regard thereto as are just.

4. The issue remark indicating claim 41Q 30134351 was not included in the 2010 decree is a notice-type remark. As no objections were filed, the remark can be removed.

RECOMMENDATIONS

1. Claim 41Q 30134351 should be changed as shown in Finding of Fact No. 4.
2. The issue remarks should be removed from claim 41Q 30134351.
A Post Decree Abstract of Water Right Claim is served with the Report for review.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Dale E. Barta
809 S. Sutton
Miles City, MT 59301

Gary P. Barta
Susan D. Barta
1463 Red Hill Rd.
Lewistown, MT 59457

Dean F. Barta
2030 E 11th Ave. Apt 902
Denver, CO 80206-2821

Brian S. Barta
124 Riverstone Way.
Greer, SC 29651-2304

POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
MISSOURI RIVER, FROM SUN TO MARIAS RIVERS
BASIN 41Q

Water Right Number: 41Q 30134351 STATEMENT OF CLAIM

Version: 2 -- POST DECREE

Status: ACTIVE

Owners:

DALE E BARTA
809 S SUTTON
MILES CITY, MT 59301

GARY P BARTA
1463 RED HILL RD
LEWISTOWN, MT 59457

SUSAN D BARTA
1463 RED HILL RD
LEWISTOWN, MT 59457

DEAN F BARTA
3320 BLACKBIRD WAY
UNIT 1
HELENA, MT 59602

BRIAN S BARTA
124 RIVERSTONE WAY
GREER, SC 29651 2304

Priority Date: JULY 13, 1962

Type of Historical Right: FILED

Purpose (use): STOCK

Flow Rate: 5.00 GPM

Volume: THIS RIGHT INCLUDES THE AMOUNT OF WATER CONSUMPTIVELY USED FOR STOCK WATERING PURPOSES AT THE RATE OF 30 GALLONS PER DAY PER ANIMAL UNIT. ANIMAL UNITS SHALL BE BASED ON REASONABLE CARRYING CAPACITY AND HISTORICAL USE OF THE AREA SERVICED BY THIS WATER SOURCE.

Source Name: SPRING, UNNAMED TRIBUTARY OF HIGHWOOD CREEK

Source Type: GROUNDWATER

Point of Diversion and Means of Diversion:

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1		NWNESW	15	19N	9E	JUDITH BASIN

Period of Diversion: JANUARY 1 TO DECEMBER 31

Diversion Means: DEVELOPED SPRING

Period of Use: JANUARY 1 TO DECEMBER 31

Place of Use:

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1			NWNESW	15	19N	9E	JUDITH BASIN

Remarks:

THIS WATER RIGHT IS ASSOCIATED WITH WATER RIGHT NO. 41R 30003437 . THEY ARE BASED ON THE SAME HISTORIC WATER RIGHT.